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**TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS**

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ATTORNEYS AT LAW, A LAW CORPORATION  
120 PAUHI STREET, SUITE 312  
HILO, HAWAII 96720-3048  
TELEPHONE (808) 961-0406 • FACSIMILE (808) 961-3815

LINCOLN S. T. ASHIDA  
DIRECT DIAL: (808) 961-0406  
E-MAIL: LSA@TORKILDSON.COM

**DOCUMENT TRANSMITTAL**

May 16, 2016

Via Facsimile (808) 587-0390 and email [dlnr@hawaii.gov](mailto:dlnr@hawaii.gov)

Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Re: Motion to Intervene Case No. BLNR-CC-16-002

We are sending you the following:

ORIG.	COPIES	DATE	DESCRIPTION
	<input checked="" type="checkbox"/>	5/16/2016	<b>PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.'S MOTION TO INTERVENE; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF SHADD KEAHI WARFIELD; DECLARATION OF PATRICK LE'O KAHAWAIOLA'A; DECLARATION OF WILLIAM H. BROWN; DECLARATION OF RICHARD HA, JR.; EXHIBITS "A" AND "B"; CERTIFICATE OF SERVICE</b>

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☒ for necessary action


☒ see remarks below

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**REMARKS:**

We respectfully file the enclosed Motion to Intervene. In the event the Hearing Officer requires our participation at the meeting today at 12 noon, we will be available via telephone at (808) 961-0406. Thank you.

Very truly yours,



Newton J. Chu  
Lincoln S. T. Ashida

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law, A Law Corporation

NEWTON J. CHU 6537-0  
LINCOLN S. T. ASHIDA 4478-0  
120 Pauahi Street, Suite 312  
Hilo, Hawai'i 96720

Attorneys for PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.

**BOARD OF LAND AND NATURAL RESOURCES**

**FOR THE STATE OF HAWAI'I**

IN THE MATTER OF

Case No. BLNR-CC-16-002

A Contested Case Hearing Re Conservation  
District Use Permit (CDUP) HA-3568 for the  
Thirty Meter Telescope at the Mauna Kea  
Science Reserve, Kaohe Mauka, Hamakua  
District, Island of Hawai'i, TMK (3) 4-4-  
015:009

**PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES,  
INC.'S MOTION TO INTERVENE;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF SHADD  
KEAHI WARFIELD; DECLARATION  
OF PATRICK LE'O KAHAWAIOLA'A;  
DECLARATION OF WILLIAM H.  
BROWN; DECLARATION OF  
RICHARD HA, JR.; EXHIBITS "A" AND  
"B"; CERTIFICATE OF SERVICE**

**PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.'S  
MOTION TO INTERVENE**

Comes Now Perpetuating Unique Educational Opportunities, Inc., a Hawai'i non-profit corporation ("PUEO"), by and through its undersigned counsel, and hereby respectfully moves the Board of Land and Natural Resources or the Hearings Officer for an order granting PUEO's request to intervene in the above-captioned contested case hearing. The Motion should be granted because:

- (1) PUEO is a Hawai`i non-profit corporation formed by Native Hawai`ians that support the pursuit of educational opportunities for children of Hawai`i. The building of the Thirty Meter Telescope atop Mauna Kea (“TMT Project”) will greatly enhance the educational opportunities for our children. PUEO was formed to, inter alia, share the interaction of Hawai`ian culture and science and to research and educate the public on the interaction of Hawai`ian culture and science and to inspire exploration. More importantly, PUEO’s purposes include furthering “educational opportunities for the children of Hawai`i in the fields of science, technology, engineering and mathematics. Its board members and beneficiaries include native Hawai`ians that reside in the Keaukaha-Pana`ewa Hawai`ian Homesteads located in Hilo, Hawai`i. PUEO’s board members include native Hawai`ians who seek knowledge and understanding and exercise customary and traditional native Hawai`ian rights on Mauna Kea.
- (2) Based on its unique standing, PUEO is entitled to mandatory intervention under Hawai`i Administrative Rules (“HAR”) § 13-1-31(b)(2) because it “will be so directly and immediately affected by the [contested case] that [its] interest in the proceeding is clearly distinguishable from that of the general public.” Id.
- (3) PUEO should alternatively be permitted to intervene under the permissive intervention provision of HAR § 13-1-31(c) because it clearly has a “substantial interest in the [contested case]” given its unique standing. PUEO’s purposes and native Hawai`ian beliefs are in support of seeking knowledge as exemplified by the TMT Project and for the co-existence of Hawai`ian culture and science atop Mauna Kea, and will also “substantially assist the board in its decision making”

because those purposes and beliefs are not currently represented by any of the existing parties to the contested case. Id.

This Motion is made pursuant to HAR § 13-1-31 and all other applicable rules of practice and procedure, and is based upon the attached Memorandum in Support of Motion, declarations, exhibits, and the entire record and files herein.

DATED: Hilo, Hawai'i, May 16, 2016

TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS,  
Attorneys at Law, A Law Corporation

A handwritten signature in black ink, appearing to read 'N. Chu', written over a horizontal line.

NEWTON J. CHU  
LINCOLN S. T. ASHIDA  
Attorneys for PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES, INC.

## **MEMORANDUM IN SUPPORT OF MOTION**

Perpetuating Educational Opportunities, Inc., a Hawai`i non-profit corporation (“PUEO”), by and through its undersigned counsel, hereby submits its Memorandum in Support of its Motion to Intervene. The Motion should be granted because:

- (1) PUEO is a Hawai`i non-profit corporation formed by Native Hawai`ians that support the pursuit of educational opportunities for children of Hawai`i. The building of the Thirty Meter Telescope atop Mauna Kea (“TMT Project”) will greatly enhance the educational opportunities for our children. PUEO was formed to, inter alia, share the interaction of Hawai`ian culture and science and to research and educate the public on the interaction of Hawai`ian culture and science and to inspire exploration. More importantly, PUEO’s purposes include furthering “educational opportunities for the children of Hawai`i in the fields of science, technology, engineering and mathematics. Its board members and beneficiaries include native Hawai`ians that reside in the Keaukaha-Pana`ewa Hawai`ian Homesteads located in Hilo, Hawai`i. PUEO’s board members include native Hawai`ians who seek knowledge and understanding and exercise customary and traditional native Hawai`ian rights on Mauna Kea.
- (2) Based on its unique standing, PUEO is entitled to mandatory intervention under Hawai`i Administrative Rules (“HAR”) § 13-1-31(b)(2) because it “will be so directly and immediately affected by the [contested case] that [its] interest in the proceeding is clearly distinguishable from that of the general public.” Id.
- (3) PUEO should alternatively be permitted to intervene under the permissive intervention provision of HAR § 13-1-31(c) because it clearly has a “substantial

interest in the [contested case]” given its unique standing. PUEO’s purposes and native Hawai`ian beliefs are in support of the TMT Project and for the co-existence of Hawai`ian culture and science atop Mauna Kea, and will also “substantially assist the board in its decision making” because those purposes and beliefs are not currently represented by any of the existing parties to the contested case. Id.

## **I. RELEVANT BACKGROUND**

PUEO is a Hawai`i non-profit corporation formed by Native Hawai`ians and organized under Hawai`i Revised Statutes Chapter 414D. See PUEO’s articles of incorporation, attached as Exhibit “A”. PUEO was formed: (a) to share the interaction of Hawai`ian culture and science; (b) to research and educate the public on the interaction of Hawai`ian culture and science and to inspire exploration; and (c) to further educational opportunities for the children of Hawai`i in the fields of science, technology, engineering and mathematics. See id.

PUEO’s board members and beneficiaries include native Hawai`ians that reside in the Keaukaha-Pane`ewa Hawai`ian Homestead located in Hilo, Hawai`i. See PUEO’s list of Directors and Officers attached as Exhibit “B”. PUEO’s board members also include native Hawai`ians who seek knowledge and exercise customary and traditional native Hawai`ian rights on Mauna Kea. See e.g. Declarations of Shadd Keahi Warfield, Patrick Le`o Kahaiwaola`a, William H. Brown, and Richard Ha, Jr. For example, Mr. Shadd Keahi Warfield is a cultural practitioner from the lineage of ali`i (chiefs) and maka`ainana (commoners) who once oversaw the leadership and stewardship in caring for the people and places of this land. His lineal descendants can be traced to Kealakekua, South Kona, Punalu`u, Ka`u, Upolu, North Kohala, Kaupo and even Maui and Nu`u of the South Pacific. Mr. Warfield and his family, as

descendants of this land have always accessed Mauna Kea to visit their heritage sites and to exercise other customary and traditional native Hawai`ian rights. See Declaration of Shadd Keahi Warfied at ¶5. Additionally, please see the attached declarations of Patrick Le`o Kahawaiola`a, William H. Brown, and Richard Ha, Jr., for further facts supporting this Motion.

## **II. DISCUSSION**

HAR § 13-1-31 provides for both mandatory and permissive intervention. PUEO is entitled to mandatory intervention in the contested case under HAR § 13-1-31(b)(2). In the alternative, PUEO should be entitled to intervene in the contested case under the permissive intervention provision of HAR § 13-1-31(c).

### **1. PUEO is entitled to mandatory intervention in the contested case under HAR § 13-1-31(b)(2).**

HAR § 13-1-31(b)(2) provides that “[a]ll persons [who] . . . can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely action.” Id. at § 13-1-31(b)(2). PUEO is a person for purposes of HAR § 13-1-31. See id. at § 13-1-2 (defining “person” to include “as appropriate individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies”).

There are no Hawai`i appellate court cases analyzing HAR § 13-1-31. However, the Hawai`i Intermediate Court of Appeals (“ICA”) did consider the right to mandatory intervention in a contested case in a related context in Public Access Shoreline Hawai`i (PASH) v. Hawai`i County Planning Commission, 79 Hawai`i 246, 900 P.2d 1313 (App. 1993) (PASH I). In PASH I, the ICA considered on appeal the Commission’s denial of PASH’s request for a contested case concerning an application for a Special Management Area Use Permit (“SMAP”). The ICA

focused on Commission Rule 4-2(6)(B) to determine PASH's<sup>1</sup> ability to intervene and request a contested case. Commission Rule 4-2(6)(B) defined a "Party" to include "[a]ny person . . . who can demonstrate that that person will be so directly and immediately affected by the Commission's decision that that person's interest in the proceedings is clearly distinguishable from that of the general public." *Id.* at 250 n. 6, 900 P.2d at 1317 n. 6. PASH submitted evidence that at least some of its native Hawai`ian members exercised their customary and traditional rights in the area subject to the SMAP to argue that its interest in the contested case was clearly distinguishable from the general public. The ICA held that such evidence was sufficient to entitle PASH to intervene and request a contested case. *See id.* at 252, 900 P.2d at 1319 (holding that "a native Hawai`ian who has exercised such rights as were customarily and traditionally exercised for subsistence, cultural, and religious purposes on undeveloped lands of an ahupua'a has an interest in a proceeding for the approval of an SMAP for the development of lands within the ahupua'a which are clearly distinguishable from that of the general public"); *id.* at 253, 900 P.2d at 1320 ("[T]o be entitled to intervention, PASH was required to show that the gathering of opae was customarily and traditionally practiced on the Kohanaiki land and that some of PASH's native Hawai`ian members exercised those rights").

In reaching its holding, the ICA also explained:

[T]he rights of native Hawai`ians are a matter of great public concern in Hawai`i. This court has repeatedly demonstrated its fundamental policy that Hawai`i's state courts should provide a forum for cases raising issues of broad public interest, and **that the judicially imposed standing barriers should be lowered when the "needs of justice" would be best served by allowing a plaintiff to bring claims before the court.**

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<sup>1</sup> PASH was an unincorporated community organization whose purpose was to preserve and protect public access to beaches and shorelines. *See id.* at 249, 900 P.2d at 1316.



PASH I, 79 Hawai‘i at 253, 900 P.2d at 1320 (quoting Pele Defense Fund v. Paty, 73 Haw. 578, 614-15, 837 P.2d 1247, 1268-69 (1992)) (emphasis added); see also Public Access Shoreline Hawai‘i v. Hawai‘i County Planning Commission, 79 Hawai‘i 425, 434, 903 P.2d 1246, 1255 (1995) (affirming the ICA’s assessment of PASH’s standing in PASH I); Ka Pa‘akai O Ka‘aina v. Land Use Comm’n, Hawai‘i, 94 Hawai‘i 31, 42, 7 P.3d 1068, 1079 (2000).<sup>2</sup>

PUEO’s board members are native Hawai‘ians from the Keaukaha-Pane‘ewa Hawai‘ian Homesteads located in Hilo, Hawai‘i. PUEO’s board members and beneficiaries exercise customary and traditional native Hawai‘ian rights on Mauna Kea. See Relevant Background Section, supra. Consequently, like PASH in PASH I, PUEO is entitled to intervene in the contested case because its interests are clearly distinguishable from the general public. The Motion should therefore be granted and PUEO is entitled to mandatory intervention in the contested case under HAR § 13-1-31(b)(2).

**2. PUEO should be permitted to intervene under the permissive intervention of HAR § 13-1-31(c).**

HAR § 13-1-31(c) provides that “[o]ther persons who can show a substantial interest in the matter may be admitted as parties. The board may approve such requests if it finds that the requestor’s participation will substantially assist the board in its decision making.” Id. Conversely, the board may deny a request to intervene when it appears that: (a) The position of the requestor is substantially the same as the position of a party already admitted to the proceedings; and (b) The admission of additional parties will not add substantially new relevant information or the addition will make the proceedings inefficient and unmanageable. See id.

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<sup>2</sup> Standing requirements are also relaxed where the interests at stake involve environmental concerns. See id. at 42, 7 P.3d at 1079 (noting that where the interests at stake involve environmental concerns, the Hawai‘i Supreme Court has “not been inclined to foreclose challenges to administrative determinations through restrictive applications of standing requirements”).

PUEO clearly has a “substantial interest” in the contested case. Indeed, it is a native Hawai`ian organization whose board members exercise their customary and traditional native Hawai`ian rights on Mauna Kea. It was also formed for the specific purpose of sharing the interaction of Hawai`ian culture and science and to inspire exploration. PUEO’s native Hawai`ian beliefs in support of the TMT Project and for the co-existence of Hawai`ian culture and science atop Mauna Kea will also “substantially assist the board in its decision making” and are not currently represented by any of the existing parties to the contested case.

Based on the foregoing, PUEO should alternatively be permitted to intervene in the contested case under HAR § 13-1-31(c). The Motion should be granted.

### **III. CONCLUSION**

Based on the foregoing, PUEO respectfully requests that its Motion to Intervene be granted under HAR § 13-1-31(b)(2) and/or HAR § 13-1-31(c).

DATED: Hilo, Hawai`i, May 16, 2016

TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS,  
Attorneys at Law, A Law Corporation

A handwritten signature in dark ink, appearing to read 'Newton J. Chu', written over a horizontal line.

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NEWTON J. CHU  
LINCOLN S. T. ASHIDA  
Attorneys for PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES, INC.

## DECLARATION OF SHADD KEAHI WARFIELD

STATE OF HAWAII                    )  
  ) SS  
COUNTY OF HAWAII                )

I, Shadd Keahi Warfield, declare under penalty of law that the following is true and correct:

I am a citizen of the United States of America. My mailing address is 53 Desha Avenue and my telephone number is 808-895-8666.

I am a native Hawaiian born and raised in the Hawaiian Homestead of Keaukaha, in Hilo, Hawai‘i. Since the time of my birth, I have been exposed to many traditional customs of the Hawaiian culture as well as Western culture. As a child, I was spoken to in the Hawaiian language by my grandmother, and English by other members of our family. It was often that while growing up, our native Hawaiian practices within our family combined with the Western religious practices of Christianity, they were very much in balance in everything that we did as a ‘ohana (family).

My family has a very long genealogical connection to many ali‘i (chiefs) and maka‘āinana (commoners) alike who once oversaw the leadership and stewardship in caring for the people and places of this sacred ‘āina (land). Our lineal decent can be traced to Kealakekua, South Kona; Punalu‘u, Ka‘ū; ‘Upolu, North Kohala; Kaupō, Maui and Nu‘u of the South Pacific region.

The construction of telescopes on Mauna Kea utilized for viewing the celestial heavens and conducting valid research into the many galaxies that exist beyond our planet has never diminished my ability to be a native Hawaiian. It has not made any of our family cultural practices difficult, as a matter of fact, the infrastructure i.e. roads,

restrooms, clearing of snow have provided the necessary means for learning more about my native Hawaiian culture on site with my grandmother before she passed in 1990. In 1985, at the age of five years old, I recall a family trip to the summit with my whole family in which grandma shared stories of where the ancient adze quarry was located and visited the ancient lake Waiau, where Queen 'Emmalani once ascended to. This period in my life would have never been made possible without the infrastructure created by the use of these telescopes on Mauna Kea. It provided a once in a lifetime opportunity with my grandmother on the summit. It was through this experience that the importance of revitalizing native Hawaiian culture and language grew within me and knowledge of the cosmos grew within me.

My father also shares a vast knowledge of the many labyrinths of ancient trails and roads that surround Mauna Kea as well as place names that I have become very familiar to. Having frequented the mountain regions for hunting of wild boar, pheasant, and other wildlife on a weekly basis as a child, a deep respect for its environment and knowledge of climate change has been quite evident. In all of our years traversing the many regions of Mauna Kea, never has it been that we would find any individuals praying and worshipping as we do today.

It is through this background that I support the construction of TMT on Mauna Kea not only to further the search of knowledge for mankind, but more importantly to further the educational advancement opportunities and revitalization efforts of native Hawaiian culture and language to all kama'āina (local) and malihini (foreigner) alike who utilize our island resources. I truly believe that the Hawaiian traditional customs and unique place-based schools of learning can combine with the technological advances

being created here in the twenty-first century and beyond. Mauna Kea will be the epitome of traditional and technological advancement into the future.

If asked to testify I will testify that the foregoing declaration is true and correct.

I, Shadd Keahi Warfield, declare under penalty of law that the foregoing is true and correct.

Dated: Hilo, Hawaii May 6, 2016.

A handwritten signature in cursive script, reading "S. Keahi Warfield", is written over a horizontal line.

[illegible]

I am a citizen of the United States of America. My mailing and physical address is 1260 Elama Drive and my telephone number is (808) 937-8217.

1. I am a native Hawaiian born and raised in Keaukaha, Hawaii. I was taught about my culture and traditional protocols and customs in the traditional ways, from my na kupuna from Keaukaha/Kau/Kauai.
2. Our family roots are on my Mother's side is Joseph Dart Sr and Philomina Kealoha Kahooluhi Kaluhilau. Their daughter Rose Mauna Dart ( Hana, Maui) born in 1903-1950 was my Mom.
3. Our family roots on my Father's side is Joseph Iokepa Kahawaiolaa and Lucy Enoka Mauliola. Their Son Antone Joseph Kahawaiolaa Sr. (Kapaia, Kauai) born 1900-1979 was my Father
4. I was born in 1944 in the territory of Hawaii before Statehood and before the construction of any telescopes on Mauna Kea, however as a native Hawaiian growing up in the oldest native Hawaiian community on lands having the status of Hawaiian Home lands in Keaukaha my experiences on Mauna Kea was mostly for accessing to conduct our traditional gathering rights as I was taken on hunting trips and trips to gather ohelo, ieie vines, tree ferns and orchards crops at Puu OO to help supplement our ohana at home in Keaukaha. We gathered adzes at the adzes quarry at Kanakaleonui and fallen Koa for our traditional art and craft work for summer school taught by cultural practitioner Papa Henry Auwae, and for sale by our na kupuna at the Hawaiian Village in Keaukaha. As was taught to me by Anake Nani Whitney. We gathered the water from Lake Waiau for medicinal purposes for our na kupuna who practiced traditional healing. As taught to me by cultural practitioner Albert Iokepa. I left in 1963 to serve in the United States Navy in Vietnam aboard a Destroyer. I served two tours of combat duty until 1967 whereby I was discharged in Los Angeles, California, got married raised my family there and coming home on vacations from time to time and seeing the progress of the telescopes being developed on Mauna Kea.

5. Upon the death of my dad in 1979 I transferred to the Honolulu Post Office of the USPS from Los Angeles. A year later I sought and was granted a transfer to my hometown of Hilo and ended my postal career in 1996 at the Hilo Post office after 32 years of Federal service.
6. The presence of the telescopes has not diminished my ability to practice my culture if I desire to do so, to worship, or to pay respects to our ancestral spirit of Poliahu, wahine kapu. In fact, I've found that the telescopes development has made it easier to continue our cultural practices at the summit area of Mauna Kea, however it's our gathering rights which appears to be a challenged by the DLNR. Before the construction of the summit road, our na kupuna walked or rode horses and or needed a 4wheeled vehicle to get to the summit but now, because of the telescopes, they maintain the road so that we can drive to the top. They even keep it open in the winter after their snow plows clear the roadway for the safety of all the people. In all my years since my return to Hawaii over 30 years ago and visiting Mauna Kea, no one has interfered with or disrespected my cultural practices, however it was my gathering rights called into question, I do feel that one's right to practice one's culture needs to be balanced with other things, such as safety on Mauna Kea—for example when the Mauna Kea access road needs to be temporarily closed because of the snow.
7. As a young child fishing in Keaukaha, I learned the old ways of the lawai'a (fisherman) and was taught to respect the knowledge of all things dealing with the moon phases, the stars, winds, the waves which if followed as taught would bring successes in the art of gathering from the kaimoana. Later, when the voyaging canoe Hokule'a and Hikianalia left for the South Pacific from Palekai in Keaukaha for the Malama Honua Voyage around the world, my hunger for knowledge of using celestial navigation once used by our wa kahiko (ancestors) only grew more. I began to reflect on my time in the Navy and saw the benefits of the proper uses of the asmuth in dealing with the winds, seas, the moon phases, and how important the study of the heavens was to the ancient Hawaiians and how it may translate using the technologies available with the Astronomy and the long range educational benefits for our young and for those yet to be born.
8. Today we have cultural practitioners who use chainsaws to begin work on a koa log to create a waa for use by our community and its children, but because the practitioner used a chainsaw would that now mean the practitioner is WRONG? Another example is a well respected cultural practitioner who uses grinders to begin to shape his versions of the kui pohaku for pounding the kalo to make poi. Is he WRONG? Is the family mahiai to supplement his need to provides poi grown from his mala at home and after harvesting the kalo, steams it in a pressure cooker and turns it into poi by using a juicer and or food processor WRONG? In Waipio the Valley of the Kings where the traditions of raising kalo, watercress, gathering wi, opae and oopu less traditional because the farmers there will use a motorized tiller, but continue to do the work of our ancestors by providing food for our families and lastly in the last fishing village of Milolii is it now WRONG for our lawai'a to use a motorized fiberglass fishing boat with an outboard motor to catch opelu and use a kiln to dry the same fish WRONG for using the technology available? This

does not make the kalai waa, the kui pohaku, the mahiai and the lawai'a and the work they do using the latest tools at their disposal any less of a Hawaiian or the Lifestyle they lead any less traditional?

9. The telescopes on Mauna Kea represents mankind's most advanced search for knowledge and understanding, as learning has been and will continue to be an important part of our cultural practices. In a way the study of Astronomy and the look into the universe using these new telescopes is like searching for the ancestral origins of the universe. How is this any different from us as native Hawaiians searching for own mookuauhau in things both natural and spiritual?
10. I mean no disrespect for anyone's religious beliefs and cultural practices, but everybody has their own way of worshipping, and everyone is free to have and practice their own religious beliefs so long as they don't hurt anyone. But I don't agree that we should oppose things on Mauna Kea just because it's a modern thing, as Hawaiians have always been a creative and adaptive people.
11. I am proud to support yet another tool that will only add to our search for knowledge, and I am proud that we will have the opportunity to have this project built, fair compensation paid to the beneficiaries and if necessary obsolete telescopes decommissioned with all this done in the best place in the world—right here on Mauna Kea.
12. If asked to testify I will testify that the foregoing declaration is true and correct.

I, Patrick Le'o Kahawaiola'a, declare under penalty of law that the foregoing is true and correct.

DATED: Hilo, Hawaii May 10, 2016.

Xxx Signiture on file Patrick Le'o Kahawaiola'a  
PATRICK LE'O KAHAWAIOLA'A



## DECLARATION OF WILLIAM H BROWN

STATE OF HAWAII                                 )  
  )   SS  
COUNTY OF HAWAII                         )

I, WILLIAM H BROWN declare under penalty of law that the following is true and correct:

1. I am a citizen of the United States of America AND a product of an Act of 1921. My mailing and physical address is 21 PAIPAI STREET and my telephone number is 808-315-2141.
2. I am a native Hawaiian born and raised in HILO, Hawaii. I learned about my culture and customs in the traditional way, from my grandparents and other members of our family. Our family roots are in the 'aina and kai.
3. The construction of telescopes on Maunakea has not diminished my ability to pay respects to our ancestral spirit and for those that practice our unique religion and beliefs. In fact, the telescopes have made it easier to continue our cultural practices at the summit area of Maunakea. Before the construction of the summit road, our grandparents and their grandparents had to walk or ride horses to get to the summit. But now, because of the telescopes, they maintain the road so that we can drive to the top. They even keep it open in the winter after their snow plows clear the roadway. In all my years of visiting Maunakea, no one has interfered with or disrespected my cultural practices. However, I do feel that one's right to practice one's culture needs to be balanced with other things, such as safety on Maunakea—for example when the Maunakea access road needs to be temporarily closed because of snow.
4. As a young keiki fishing and foraging with my family, I learned the old ways of conservative practices with take what you need and to respect nature and its wisdom. This wisdom has filtered to my children, nieces, and nephew, who would themselves follow the footsteps of the voyaging canoe Hokule'a, their curiosity and hunger for knowledge only grew more. Their persistent with learning the stars and the moon, and how important the study of the heavens was to the ancient Hawaiians. It is this quest for knowledge that is the main reason I support the TMT—because it will help my progenies to learn more about themselves, our culture and heritage, and God, and what's out there beyond the stars that we can see with only our eyes.
5. The telescopes on Maunakea represent mankind's most advanced search for knowledge and understanding, as learning has been and will continue to be an important part of our cultural practices. In a way, the TMT projects are like a search for the aumakua or

ancestral origins of the universe. How is this any different from us as native Hawaiians searching for own roots in things both natural and spiritual?

6. I mean no disrespect for anyone's religious beliefs and cultural practices, but everybody has their own way of worshipping, and everyone is free to have and practice their own religious beliefs so long as they don't hurt anyone. But I don't agree that we should oppose things like the TMT on Maunakea just because it's a modern thing, as Hawaiians have always been a creative and adaptive people.
7. In my own backyard, we practice ancient husbandries to grow mea'ai (food) to include modern techniques, knowledge, equipments to grow the necessary perishable items for our family and community, but for the most part, we still consider this to be traditional and cultural as it allows us to survive and follow the ways and lifestyles of our ancestors. And along the Hilo and Puna coastline, where we the Lawai'a (fishermen) continue this day to traverse the rocky coast, looking for edible sustenance like Opihi, Limukohu, and A'ama, diving for Wana and Pipi'i, spearing Manini, Kole, Weke, and Kumu but most of all throwing our traditional net on a bounty of I'a schools is a technique of old but modern material usage to construct the net, the diving equipment, and the tool to collect mea'ai on the rocky coast. This does not make fishing along the Hilo and Puna Coast any less traditional or the lifestyle any less Hawaiian, as we must learn to use the tools that God has given us.
8. I am proud to support yet another tool that will only add to our search for knowledge, and I am proud that we, as Hawaiians, will have the opportunity to have this project built on the best place in the world—right here on Maunakea.
9. I will reserve the right to testify that the foregoing declaration is true and correct.

I, WILLIAM H BROWN, declare under penalty of law of the land that the foregoing is true and correct.

DATED: Hilo, Hawaii MAY 11, 2016.



[NAME]

## DECLARATION OF RICHARD HA JR.

STATE OF HAWAII                                 )  
  )   SS  
COUNTY OF HAWAII                         )

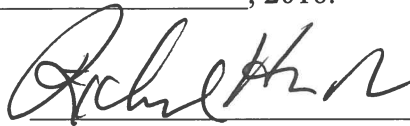
I, Richard Ha Jr. declare under penalty of law that the following is true and correct:

1. I am a citizen of the United States of America. My mailing and physical address is 421 Lama Street, Hilo, Hawaii 96720 and my telephone number is (808) 960-1057.
2. I am Richard Ha Jr. I am 25% Hawaiian. My dad was Richard Kimana Ha Sr. He was 50% Hawaiian. Mom was 100% Okinawan. His mom, my grandmother was Leihulu Kamahele Ha, who was 100% Hawaiian. His dad Kyong Soo Ha was 100% Korean. My grandma Leihulu's parents were 100% Hawaiian.
3. Our family land was at Maku'u on the ocean. I learned the most important lessons about farming from Uncle Sonny Kamahele. I spent many hours observing what, why and how Uncle Sonny farmed. He followed the science of the day, by taking the advice of the University of Hawaii extension agents.
4. He farmed on a ten acre plot of land, growing watermelons, tomatoes and Kalo. He had no water or electricity. But, he did have a redwood water tank that filtered water through a Bull Durham bag on the faucet. His light at night consisted of a kerosene lattern and flashlight as necessary. On the side of his bed, which consisted of a wooden platform with many Lauhala mats as his bed, he had a stack of US News and World Reports.
5. Uncle Sonny would plant two corn plants on either side of his watermelon patch. He kept a can of raid in his back pocket and knew when the fruit flies would rest in the shade. He did not spray all the plants. When he mixed his herbicides he would stick a leaf of the target grass into the mixture to see if it adhered the way he wanted it to stick. Today people measure mix and just assume that it's right.
6. Uncle Sonny kept his farm and the surrounding area clean, neat and orderly. Living and working was a total package.
7. The big lesson I learned from Uncle Sonny was to notice and respect how every farmer managed the pluses and minuses given their individual condition. It did not matter the size of the operation, what mattered was how the individual managed the pluses and minuses. Uncle Sonny used the tools that was appropriate for his work. It was practical, common sense and adapted the science of the day.
8. My dad helped to build the road to the summit of Maunakea. It was practical, common sense and used the science of the day. My brother went up to fuel the bulldozer everyday and spent a lot of time exploring. Neither felt that they were doing anything wrong.

9. Influenced by my parents, Uncle Sonny and my experiences in life, I associate myself with the maka'ainana.
10. When I was first associated with the Thirty Meter Telescope, I felt uneasy. I had volunteered to be on the TMT subcommittee, but it wasn't until I met Henry Yang, the new president of the TMT corp., did I know that I had met a person who was truly concerned about the maka'ainana. I describe it short hand by saying; " I can do business with Henry on a handshake".
11. It was because Henry met with the people on the ground that the THINK \$1 million annual was founded. Henry realized that the subject people on all sides of the issue could agree on, was education.
12. The folks on the ground agree that not everyone can be astronomers, they realize that all jobs are important to the folks trying to raise their families. It's important for jobs to be available so young folk do not have to leave Hawaii to raise their families.
13. Hawaii county has the lowest median family income, the highest rate of homelessness and highest suicide of all the counties. Education gives the best correlation to family income. The more education the higher the family income.
14. The TMT has agreed to give the Institute of Astronomy 7.5% of the viewing time. UH Hilo could split the viewing time in half and convert that to viewing through all the telescopes under the control of the IFA. That would be an unbelievable benefit to Hawaii Island. No where in the world would students have that opportunity.
15. If the TMT leaves, that opportunity, the THINK education opportunity, the community outreach opportunity all leaves.
16. As a Hawaiian, I believe that we should share this blessing.
17. It's entirely In keeping with what I learned from Uncle Sonny Kamahele. Use common sense, be practical, share with each other and utilize the science of the day.
18. If asked to testify I will testify that the foregoing declaration is true and correct.

I, Richard Ha Jr., declare under penalty of law that the foregoing is true and correct.

DATED: Hilo, Hawaii       MAY 16 2016      , 2016.



RICHARD HA JR.

# EXHIBIT A

FILED 04/12/2016 12:43 PM  
Business Registration Division  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
State of Hawaii



**ARTICLES OF INCORPORATION**  
(Section 414D-32, Hawai'i Revised Statutes)

The undersigned, acting as the incorporator of a corporation to be formed pursuant to the provisions of the Hawai'i Nonprofit Corporation Act, Hawai'i Revised Statutes Chapter 414D, does hereby adopt the following articles of incorporation:

**ARTICLE I**

**CORPORATE NAME**

The name of the corporation is:

Perpetuating Unique Educational Opportunities, Inc.

**ARTICLE II**

**MAILING ADDRESS**

The mailing address of the corporation's initial principal office is:

120 Pauahi Street, Suite 312  
Hilo, HI 96720

**ARTICLE III**

**REGISTERED AGENT AND AGENT ADDRESS**

The name of the corporation's initial registered agent and the street address of the place of business of the person in the State of Hawai'i to which service of process and other notice and documents being served on or sent to the corporation may be delivered is:

Newton J. Chu  
120 Pauahi Street, Suite 312  
Hilo, HI 96720

BJM

ARTICLE IV  
INCORPORATOR

The name and address of each incorporator is:

Richard Ha  
421 Lama Street  
Hilo, HI 96720

ARTICLE V  
MEMBERS

The corporation shall have no members.

ARTICLE VI  
CORPORATE PURPOSES AND POWERS

The purposes for which the corporation is formed, and the business and objects to be carried on and promoted by it are as follows:

- (a) To share the interaction of Hawaiian culture and science.
- (b) To research and educate the public on the interaction of Hawaiian culture and science and to inspire exploration.
- (c) To further educational opportunities for the children of Hawai'i in the fields of science, technology, engineering and mathematics.
- (d) To be organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding section of any future Internal Revenue law.

The corporation shall have all powers, rights, privileges and immunities permitted or provided to nonprofit corporations under Chapter 414D, Hawai'i Revised Statutes, as amended, and all other applicable laws.

## ARTICLE VII

### LIMITATION ON CORPORATE ACTIVITIES

Notwithstanding any provision to the contrary herein contained, the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

## ARTICLE VIII

### NONPROFIT STATUS

The corporation is not organized for profit and will not issue any stock and will pay no dividends. No part of the assets, income or earnings of the corporation shall inure to the benefit of, or be distributable to, its directors or officers. Notwithstanding the foregoing, the corporation shall be authorized and empowered to pay reasonable compensation for services rendered, to make reimbursements for expenses actually incurred in service to the corporation and to make payments and distributions in furtherance of the purposes of the corporation.

## ARTICLE IX

### LIMITATION OF LIABILITY

(1) No director of the corporation shall be personally liable to the corporation for any monetary loss or damage suffered by it on account of a breach of any of the director's duties to the corporation; provided, however, that such director's liability shall not be limited for: (a) any breach of the director's duty of loyalty to the corporation; (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) any transaction from which the director derived an improper personal economic benefit; or (d) any violations of the Hawai'i Nonprofit Corporations Act relating to director conflicts of interest, loans to or guaranties for directors and officers, or director liability for unlawful distributions.

(2) No person who serves as a director or officer of the corporation without remuneration or expectation of remuneration shall be liable for damage, injury or loss caused by or resulting from the director or officer's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the director or officer was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this section, remuneration does not include payment or reimbursement of reasonable expenses or the provision of indemnification or insurance for actions as a director or officer.



(3) The limitation of liability provided in subsections (1) and (2) of this Article shall be cumulative and not exclusive, and shall be independent of and in addition to each other and any other limitation of liability provided by law or in any other agreement. Any repeal, amendment or modification of this Article shall not affect the limitation of liability provided in this Article for any acts or omissions occurring prior to such repeal, amendment or modification. The limitation of liability provided for in this Article shall continue as to any person who has ceased to be a director or officer of the corporation and shall inure to the benefit of such person's heirs, personal representatives, executors and administrators.


## ARTICLE X

### DISSOLUTION

If the corporation shall cease to exist or shall be dissolved, all property and assets of the corporation of every kind, after payment, or making provision for the payment, of its just debts and liabilities shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or any successor provision thereto) or to one or more corporations, associations or other organizations that are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or any successor provision thereto).

The undersigned hereby certifies that the undersigned has read the foregoing statements and that the same are true and correct.

IN WITNESS WHEREOF, the undersigned has executed these presents this 31 day of March, 2016.

  
Richard Ha

BJM

# EXHIBIT B

UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF  
PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.

The undersigned, constituting the entire Board of Directors of PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC., a Hawaii nonprofit corporation (the "Corporation"), do hereby consent to and adopt the following resolutions in writing in lieu of an organizational meeting, as authorized by and pursuant to the provisions of Section 414D-35 of the Hawaii Revised Statutes:

Ratification of Articles of Incorporation

RESOLVED, that the actions of the incorporator in filing the articles of incorporation are ratified and the said articles are hereby approved and adopted.

Adoption of Bylaws

RESOLVED, that the bylaws attached hereto are hereby adopted by the Corporation and the Secretary of the Corporation is directed to execute a certificate of the adoption of said bylaws and to insert said bylaws, as so certified, in the corporate record book of the Corporation.

Adoption of Conflict of Interest Policy

RESOLVED, that the Conflict of Interest Policy attached hereto is hereby adopted by the Corporation.

Election of Officers

RESOLVED, that the following persons be, and they hereby are, elected as officers of the Corporation to the offices set forth opposite their respective names, to serve with such other officers as may be appointed by the Board of Directors until the next annual Board of Directors' meeting and thereafter until their successors are elected and qualified:

Keahi Warfield	President
Bill Brown	Vice President
Mapuana Waipa	Secretary
Mapuana Waipa	Treasurer

### Tax Exempt Status

RESOLVED, that the officers of the Corporation are hereby authorized and directed to file with the Internal Revenue Service and the State of Hawaii Department of Taxation one or more applications for the exemption from federal and state income tax and Hawaii general excise tax, and all acts of the officers of the Corporation which are consistent with the purposes and intent of these resolutions shall be and the same hereby are in all respects ratified, approved and confirmed.

### Miscellaneous

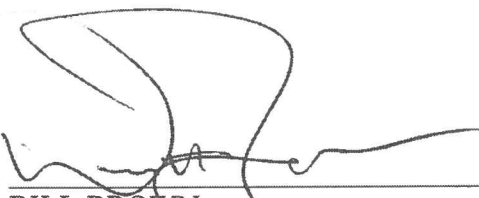
RESOLVED, that the President or Treasurer of the Corporation is authorized to open a corporate bank account with a bank of their choice, that the officers of the Corporation are authorized to sign checks and other instruments of withdrawal from any such accounts and that said bank's standard resolutions relating to the opening of a corporate account are hereby adopted as though fully set forth herein;

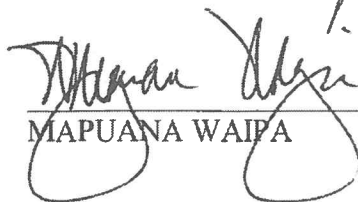
RESOLVED, FURTHER, that the officers of the Corporation be, and they hereby are, authorized and directed to pay all expenses of the incorporation and organization of this Corporation;

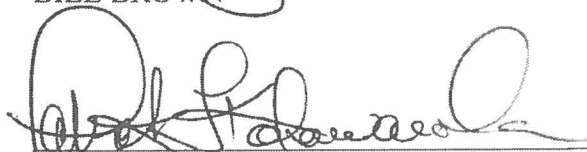
RESOLVED, FURTHER, that the officers of the Corporation are directed to execute all documents and to take such action as they may deem advisable in order to carry out the purposes of these resolutions.

DATED: April 28, 2016

  
\_\_\_\_\_  
KEAHI WARFIELD

  
\_\_\_\_\_  
BILL BROWN

  
\_\_\_\_\_  
MAPUANA WAIFA

  
\_\_\_\_\_  
PATRICK KAHAWAIOLA'A

*Richard HA*

RICHARD HA

**BOARD OF LAND AND NATURAL RESOURCES**  
**FOR THE STATE OF HAWAI'I**

IN THE MATTER OF

Case No. BLNR-CC-16-002

A Contested Case Hearing Re Conservation  
District Use Permit (CDUP) HA-3568 for the  
Thirty Meter Telescope at the Mauna Kea  
Science Reserve, Kaohe Mauka, Hamakua  
District, Island of Hawai'i, TMK (3) 4-4-  
015:009

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, a copy of the foregoing was duly served on the following parties  
by mail, postage pre-paid to their last known address:

Julie H. China  
Deputy Attorney General  
Department of the Attorney General  
465 South King Street, Room 300  
Honolulu, HI 96813

Counsel for the BOARD OF LAND AND NATURAL RESOURCES

Riki May Amano  
1003 Bishop Street  
Suite 1155, Pauahi Tower  
Honolulu, HI 96813

HEARING OFFICER

Richard N. Wurdeman  
Attorney at Law  
1003 Bishop Street, Suite 720  
Honolulu, HI 96813

Attorney for MAUNA KEA ANAINA HOU; CLARENCE KUKAUAKAHI CHING;  
FLORES-CASE 'OHANA; DEBORAH J. WARD; PAUL K. NEVES; AND KAHEA: THE  
HAWAIIAN ENVIRONMENTAL ALLIANCE

CARLSMITH BALL LLP  
Ian L. Sandison  
Timothy Lui-Kwan  
Arsima A. Muller  
1001 Bishop Street  
American Savings Bank Tower, Suite 2100  
Honolulu, HI 96813

Attorneys for THE UNIVERSITY OF HAWAII AT HILO

DATED: Hilo, Hawai'i, May 16, 2016

TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS,  
Attorneys at Law, A Law Corporation

A handwritten signature in black ink, appearing to read 'Newton J. Chu', written over a horizontal line.

NEWTON J. CHU  
LINCOLN S. T. ASHIDA  
Attorneys for PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES, INC.